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Consumer Financial Protection Bureau: Unparalleled Unaccountability

The Consumer Financial Protection Bureau (CFPB) exercises unprecedented investigative and rulemaking authority. Unlike other federal agencies, the CFPB is free to meddle with whole sectors of the nation's economy without accountability.

The [mission statement](#) of the CFPB is to “make markets for consumer financial products and services work for Americans by promoting transparency and consumer choice and preventing abusive and deceptive financial practices.” The agency's unaccountable decision making, however, reduces transparency. Its unrestricted and possibly unconstitutional access to taxpayer dollars outside the regular appropriations process allows for virtually no limits on the agency.

CFPB's Lack of Transparency

The CFPB is not subject to appropriations, receiving more than \$400 million each year directly from the Federal Reserve without taxpayer approval or adequate oversight from Congress. The agency is free to impose its will on job creators and consumers virtually unimpeded.

The [Dodd-Frank Act](#) provides CFPB with rule-making and enforcement [authority](#) to prevent unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a financial product or service. The terms “unfair” and “deceptive” have decades of case law and Federal Trade Commission guidance that help banks and other financial service providers ensure that the products they offer will not violate these standards. However, the term “[abusive](#)” is an entirely new standard, and the definition of this term provided by Dodd-Frank is subjective.

During a House Financial Services Committee [hearing](#) in March, CFPB Director Richard Cordray implied he would use his enforcement authority to define the “abusive” standard rather than clarifying it through the rulemaking process. This will deny job creators their right to weigh in on an ambiguous standard directly affecting their businesses, employees and consumers. On July 16, 2012, the CFPB announced its [rulemaking agenda](#) – 27 new rules, ranging from those required by the Dodd-Frank Act to new initiatives created out of whole cloth.

CFPB's Budget Explosion

According to one estimate, the CFPB will see its budget [increase](#) more than three-fold between fiscal years 2011 and 2013, to \$448 million. It will also see staff increase from 178 to 1,359 employees over the same time. CFPB's semi-annual report shows the agency has already grown to 889 employees.

The law gives the agency virtually unrestricted access to a slush fund through the Civil Penalty Fund. When the CFPB obtains a civil penalty, the agency is required to deposit the penalty into the Civil Penalty Fund. The intention of the fund is to make payments to the victims of activities for which the penalty was imposed. However, if the agency cannot locate the victims or the payments are "otherwise not practicable," the agency is allowed to use these funds for "consumer education and financial literacy programs."

The CFPB can use the ambiguous "abusive" standard to penalize job creators – large and small – to supplement an ever-growing, virtually unaccountable government bureaucracy and add to its slush fund

Without structural reform of the CFPB based on constitutional checks and balances, job creators and consumers will soon begin to feel the consequences of this unaccountable regulatory agency — fewer choices among financial products and services and higher costs for those that are available.

An Example of CFBP Gone Wrong

The Dodd-Frank Act mandated that CFPB take a detailed look at the private student loan market. What it [found](#), not surprisingly, is that of the more than \$1 trillion in student loan debt, \$864 billion is in government-guaranteed federal student loans, not private loans. Private loans are only 14 percent of the total student loan debt, and less than seven percent of the student loan volume originated in 2011.

The report also revealed that the majority of private student loans are originated by traditional financial institutions that follow traditional lending standards. These lending standards in the private student loan industry have tightened without CFPB or federal intervention. For example, unlike federal student loans, private student loans require borrowers to undergo a credit check, and credit scores have increased over the last several years — 90 percent of the private student loans that were originated in 2011 had a creditworthy co-signer. Additionally, school financial aid offices verified that the private loan amounts matched the student loan borrower's financial needs more than 90 percent of the time.

Yet, despite the loan disclosures already required, the fact that almost all of the private loans are being given to creditworthy borrowers, and that school financial aid administrators are already approving individual borrowing decisions, the CFPB is calling for changes to bankruptcy law that would allow these loans to be discharged in bankruptcy court. Student loans currently cannot be discharged in bankruptcy, though there are other repayment options to help borrowers keep from defaulting or to help them bring the loans out of default once they've missed a payment.

CFPB launched its own website — [the Student Loan Debt Collection Assistant](#) — to give borrowers information on how student loan repayment options, as well as on how to communicate with the loan servicer and bring their loan out of default. This website duplicates information borrowers receive elsewhere and is in addition to CFPB's existing [Student Debt Repayment Assistant](#), which also provides information on repayment options.

Republican Solutions

Republicans have proposed true common-sense reforms to the CFPB to ensure accountability and provide normal checks and balances. The reforms include:

- Establish a CFPB board of directors;
- Require the CFPB to submit a budget request and go through the appropriations process just like the Securities and Exchange Commission, the Commodity Futures Trading Commission and the Federal Trade Commission; and
- Allow federal bank regulators to oversee CFPB regulations to ensure they do not needlessly cause bank failures.

Instead, today we have litigation on the constitutionality of the CFPB, an unconstitutionally appointed director, and another unaccountable Washington agency.